

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

) Case No.:  
**BARBARA ANDEL,** )  
Plaintiff, )  
v. )  
**KOHL'S DEPARTMENT STORES, INC.,** ) JURY TRIAL DEMANDED  
Defendant. )

## **COMPLAINT**

BARBARA ANDEL (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against KOHL’S DEPARTMENT STORES, INC. (“DEFENDANT”):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. §227.

#### **JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant regularly conducts business in the Commonwealth of Pennsylvania, thus, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

## PARTIES

5. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

6. Plaintiff is a natural person residing in Philadelphia, Pennsylvania

7. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

8. Defendant is a corporation with its principal place of business located at N 56 W 17000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## **FACTUAL ALLEGATIONS**

10. Plaintiff has a cellular telephone number.

11. Plaintiff has only used this phone as a cellular telephone.

12. Defendant placed repeated, continuous telephone calls to Plaintiff's cellular telephone number.

13. Defendant used an automatic telephone dialing system, automated message and/or prerecorded voice when contacting Plaintiff.

1       14. Plaintiff knew that Defendant was using an automatic telephone  
2 dialing system because calls would start with either a pre-recorded message or a  
3 noticeable pause or silence with no caller on the line before being transferred to a  
4 representative or terminating.  
5

6       15. Defendant's telephone calls were not made for "emergency purposes."

7       16. Desiring to stop the repeated telephone calls, Plaintiff spoke with  
8 Defendant's agents to advise them that she no longer wanted to be contacted on her  
9 cellular telephone and to stop calling her shortly after the calls started.  
10

11       17. Once Defendant was aware that its calls were unwanted and to stop,  
12 there was no lawful purpose to continue making further calls, nor was there any  
13 good faith reason to place calls.  
14

15       18. However, Defendant failed to update its records to restrict telephone  
16 calls to Plaintiff's cellular telephone forcing Plaintiff to make additional requests to  
17 stop calling, which were also ignored.  
18

19       19. Despite her requests to stop calling, Plaintiff continued to receive  
20 repeated automated calls from Defendant to her cellular telephone up to several  
21 times in a single day.  
22

23       20. Plaintiff found Defendant's repeated calls to be invasive, harassing,  
24 annoying, aggravating, frustrating, stressful, and upsetting.  
25

26       21. Upon information and belief, Defendant conducts business in a  
27  
28

manner which violates the TCPA.

**COUNT I**  
**DEFENDANT VIOLATED THE TELEPHONE CONSUMER  
PROTECTION ACT**

22. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

23. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone number.

24. Defendant's initiated these automated calls to Plaintiff using an automatic telephone dialing system and/or pre-recorded voice.

25. Defendant repeatedly placed non-emergency calls to Plaintiff's cellular telephone.

26. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a private cause of action in an appropriate court based on a violation of the TCPA or the regulations prescribed under the TCPA to enjoin such violation.

27. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a private cause of action in an appropriate court “to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation whichever is greater.”

1       28. After Plaintiff told Defendant to stop calling, the Defendant knew or  
2 should have known it did not have consent to call and that any consent to call it  
3 thought it had was revoked.  
4

5       29. Based upon the conduct of Defendant, Plaintiff avers that the  
6 enhancement of damages provided for by the TCPA allowing for Plaintiff to  
7 recover up to \$1,500 per call/violation be applied to calls placed.  
8

9       30. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by  
10 placing repeated calls using an automatic telephone dialing system to Plaintiff's  
11 cellular telephone.  
12

13       31. Defendant's acts as described above were done with malicious,  
14 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
15 under the law and with the purpose of harassing Plaintiff.  
16

17       32. The acts and/or omissions of Defendant were done unfairly,  
18 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
19 lawful right, legal defense, legal justification or legal excuse.  
20

21       33. As a result of the above violations of the TCPA, Plaintiff has suffered  
22 the losses and damages as set forth above entitling Plaintiff to an award of  
23 statutory, actual and trebles damages.  
24  
25  
26  
27

## **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff, BARBARA ANDEL, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
  - b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
  - c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
  - d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
  - e. Any other relief deemed appropriate by this Honorable Court.

## **DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, BARBARA ANDEL, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: 10/31/19

By: /s/ Amy L. Bennecoff Ginsburg  
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